Dear Mark, 5/26/85

After we spoke Friday I realized that I could save you some time by making copies of samples from the FBI's ticklers disclosed to Mark Allen that were at hand. I mean by this that they were all in a single file folder in my office and required no use of the stairs or real work or time. The exception is from my office appeals file, also right at hand. For your convenience I've made a few comments by subject and attach them to the relevant copies. In the course of this reading I thought of a simple, two-part argument I think is appropriate and of some possible usefulness, whether or not anything can be useful before a Smith. I want to think about it a bit more, but all I have in mind is perhaps as little as two sentences.

Consistent with simplicity and brevity, both also useful if there is ever any press interest, which I now think is not impossible, I've not attached all copies of these records, only enough to illustrate and make the point.

I think that when you brief this you may have more than Smith in mind. I hope so! I think also that if you are so disposed, and I hope you are, you may have contacts in the press who could be interested. It is simple, outrageous, and what you'll not say in all probability, per perjury and close to it and having that purpose, which an unprejudiced reporter will see without it being spelled out.(Jim can tell you whether Phillips is the supervisor in the Allen litigation.)

I believe it would be effective - and proper or at least not improper - to have a refrain, repeated and repeated for it requires few words but imparts the proper emphasis, legal and literary: No discovery from Weisberg was necessary for the FBI to know that it had these records and no discovery from Weisberg would have enabled the FBI to prove that it had complied - which means provided these records - when it had not and knew it had not. With each illustration.

Their claim in demanding discovery is that what I provided would enable them to prove that they had searched and had complied, as I recall it. This new evidence gives the lie to their claims in demanding discovery and now fees. While I do not ask you to argue it, I think this new evidence establishes a case of fraud. That, however, may suggest itself to a reporter.

I think, as best without knowledge of the law one may, that this new evidence provides a peg for hanging a motion on. Smith has made no finding of fact, and under the remand he can't. There has been no hearing, no trial. I have, I believe a right to some proper proceeding, if not a trial, and I'm asking you to consider whether when you file this you are willing to make that additional use of the new evidence. Any refusal by Smith may make sense to some lawyers but I doubt it will to the press, particularly if a constitutional right is asserted.

I am quite willing to testify, despite my handicaps and limitations. I'd have to be able to keep my legs up and about every 20 minutes walk for a minute or even less, and be able to park the car of my transportation so that the driver would not get lost after leaving me out at a door. Although I rarely need of use it now I can bring a wheelchair for keeping the legs up or I can use an attache case, as I have in the past, although it is not as good because it isn't as high as is best. As Jim can remember and tell you, after tough AUSA John Dugan crossexamined me once he refused to again and all their lawyers have fought deposing me very strongly. So, for this and other reasons, I believe they'll oppose such a move. And that ought make them look bad and raise new constitutuonal question in lay minds. They'll resist any testimony by Phillips also very strongly, and that can't make them look good. You would have a real senaation if you can ever get that rotter on the stand! And La Haie! With what they filed!

It may sound like boasting but I do not intend that, only to give you some confidence in me as a witness. Back in 1937 or 1938, which was before my more intense experiences before the grand jury, when Dave Pine, later chief federal judge, was USA, he used me as a witness. In preparing me he referred to me, to both me and Ed Curran, also later chief judge, as "affidavit face." After cross-examination by tough counsel, he repeated the same description of my credibility and appearance. They won't be able to touch me on fact and they'll know it and they won't be able to intimidate me and they'll know it and if they attempt to attack me on the basis of those FBI fabrications and exaggerations, all you'll need do is see to it that I have ample opportunity to respond fully. I've never been a Communist and I've often defended the FBI, from irresponsible accusations. Here, too, you could have a field day. I don't mean whooping and hollering, merely cool fact. Truth is a shield and a buckler! And to mix figures, what holy water we could wave before those werewolfs!

The one problem would be silence, and you ought be able to take care of that after our long silence. People, including the press, simply will not understand how there can be punishment without a trial and anyone opposing it will look bad from the outset. And aside from trying to make me look bad, which I think will backfire, what can they do? What questions can they ask me that will hurt me or will not hurt them?

Taking the initiative and at this juncture can be very important in and of itself, aside from what it can accomplish as a matter of law or fact. This is the kind of thing I mean when I refer to intelectual judo, using their greatest strength against them and turning them over with it. That is what would happen!

So, in whatever way you deem proper, why not accompany the submission of the new evidence with a request for a trial? Using it, among other uses, as the basis.

My only concern is of weariness, and I'm not really concerned about that. As I think of this, however, despite the cost, I think it would be wiser if I went down the day before and took a room somewhere, where the only prerequisite would be a bathroom involving no stairs and an elevator or few stairs, like one flight. I could get a friend to drive me down one day and pick me up the next day. The trip alone tires me.

Be not of faint heart! We can do it and we can do much good by it!

Lay on!

Harold

P.S. 5/20: I do not recall if it is in the affidavit I filed in an effort to be of help to Jim or in any other affidavit, although I think I stated it somewhere. With all the extensive amount of information and documentation I had already given the defendant voluntarily, only to have it all ignored, and with my extensive similar experiences in other litigation (remember, I gave them two full file cabinets of information), including a dirty trick they got away with, pressuring June Green into having me serve as their consultant in my suit against them, which resulted in a 200 page report that, except for Quin Shea, they entirely ignored, I believe that the demanded discovery was harassment, stonewalling and would also be ignored. After all, look at all they ignored.